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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 THE ESTATE OF CINDY LOU HILL, by
and through its personal representative,
10 Joseph A. Grube.

11 Plaintiff,

12 vs.

13 NAPHCARE, INC, an Alabama
corporation; and SPOKANE COUNTY,
a political subdivision of the State of
14 Washington,

15 Defendants.
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18
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No. 2:20-cv-00410-MKD

PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND
RECOVERABLE COSTS

September 6, 2022
Without Oral Argument

20 PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND
RECOVERABLE COSTS – Page 1

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I. INTRODUCTION

On July 19, 2022, the jury returned a verdict against Defendants Spokane County and NaphCare, Inc. ECF 240. Plaintiff prevailed on all claims asserted against both defendants, including its claims under 42 U.S.C. § 1983, resulting in a judgment of \$2,750,000 against Spokane County and \$26,750,000 against NaphCare. ECF 245.¹ As the prevailing party against both defendants under 42 U.S.C. § 1983, Plaintiff now moves for an award of attorneys' fees and costs under 42 U.S.C. § 1988, Fed. R. Civ. P. 54(d)(2), and LCivR 54(d)(2). This motion is supported by the accompanying declarations of Edwin S. Budge, Hank Balson, Erik J. Heipt and Beth Bloom. The total requested amount is \$1,341,168.52.

II. LEGAL AUTHORITY

"In an action brought under 42 U.S.C. § 1983, a prevailing plaintiff is entitled to reasonable attorney's fees." *Roberts v. City. & Cty. of Honolulu*, 938 F.3d 1020, 1023 (9th Cir. 2019). The statutory authority for such an award is found at 42 U.S.C. § 1988(b), which authorizes district courts to award reasonable attorneys' fees to a prevailing plaintiff in a civil rights action, including actions under § 1983. *Chalmers v. City of L.A.*, 796 F.2d 1205, 1210 (9th Cir. 1986), *reh'g denied and opinion amended*, 808 F.2d 1373 (9th Cir. 1987).

¹ The Defendants' § 1983 liability is joint and several. ECF 245 at 1.

1 “Once a party is found eligible for fees, the district court must then
2 determine what fees are reasonable.” *Soler v. Cty. of San Diego*, No. 14-cv-2470,
3 2021 U.S. Dist. LEXIS 114484, at *8 (S.D. Cal. June 18, 2021) (internal quotation
4 marks omitted). To determine the appropriate fee award, courts multiply the
5 number of hours reasonably expended on the case by a reasonable hourly rate for
6 the attorneys performing the work. *Hensley v. Eckerhart*, 461 U.S. 424, 433
7 (1983). Reasonable hours are those that “would have been undertaken by a
8 reasonable and prudent lawyer to advance or protect [the] client’s interest in
9 pursuit of a successful recovery.” *Armstrong v. Davis*, 318 F.3d 965, 971 (9th Cir.
10 2003) (internal quotation marks omitted). The product of this calculation is “the
11 lodestar figure” and provides an objective basis to make an initial estimate of the
12 fee award. *Hensley*, 461 U.S. at 433. The lodestar is the “presumptively
13 reasonable” fee. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir.
14 2013); *Ballen v. City of Redmond*, 466 F.3d 737, 746 (9th Cir. 2006).

15 “Where a plaintiff has obtained excellent results, [its] attorney should
16 recover a fully compensatory fee. Normally this will encompass all hours
17 reasonably expended on the litigation, and indeed in some cases of exceptional
18 success an enhanced award may be justified.” *Hensley*, 461 U.S. at 435.
19 Additionally, the Ninth Circuit “requires that courts reach attorney’s fee decisions
20 by considering some or all of twelve relevant criteria set forth in *Kerr v. Screen*

1 *Extras Guild, Inc.*, 526 F.2d 67 (9th Cir. 1975).” *Quesada v. Thomason*, 850 F.2d
2 537, 539 (9th Cir. 1988). These factors are: “(1) the time and labor required; (2)
3 the novelty and difficulty of the questions involved; (3) the skill requisite to
4 perform the legal service properly; (4) the preclusion of other employment by the
5 attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is
6 fixed or contingent; (7) time limitations imposed by the client or the
7 circumstances; (8) the amount involved and the results obtained; (9) the
8 experience, reputation, and ability of the attorneys; (10) the ‘undesirability’ of the
9 case; (11) the nature and length of the professional relationship with the client; and
10 (12) awards in similar cases.” *Kerr*, 526 F.2d at 70. The degree of success obtained
11 is the “most critical factor” in determining the reasonableness of the fee award.
12 *Farrar v. Hobby*, 506 U.S. 103, 114 (1992).

13 Moreover, “[i]t is well established that attorney’s fees under 42 U.S.C. §
14 1988 include reasonable out-of-pocket litigation expenses that would normally be
15 charged to a fee paying client, even if the court cannot tax these expenses as ‘costs’
16 under 28 U.S.C. § 1920.” *Trustees of the Const. Indus. & Laborers Health &*
17 *Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1257 (9th Cir. 2006).

18 In § 1983 cases involving the joint and several liability of two defendants
19 and a single injury, both defendants should be held jointly and severally liable for
20 fees. *See Delew v. Nevada*, 2:00-cv-00460, 2010 U.S. Dist. Ct. LEXIS 154818 at

1 *15 (D. Nev. Jan. 7, 2010). *See also Molnar v. Booth*, 229 F.3d 593, 605 (7th Cir.
2 2000) (“When two or more defendants actively participated in a constitutional
3 violation, they can be held jointly and severally responsible for indivisible
4 attorney’s fees.”). *See also Corder v. Gates*, 947 F.2d 374, 383 (9th Cir. 1991).

5 III. ARGUMENT

6 The accompanying declarations of Plaintiff’s counsel detail their
7 qualifications, skill, and experience, summarize the professional work involved in
8 pursuing this case to its successful conclusion, and substantiate an award of fees
9 and costs through the date of this motion as outlined below.

10 A. Qualifications of Counsel

11 As explained in the Declaration of Edwin S. Budge, Plaintiff’s counsel is a
12 small law firm of only three attorneys and one non-attorney staff member. Budge
13 decl. ¶ 6. For at least 20 years, the firm’s practice has focused almost exclusively
14 on the representation of plaintiffs in wrongful death and serious injury cases—the
15 vast majority of which involve federal court litigation of claims under § 1983 for
16 in-custody deaths. *Id.* ¶ 5.

17 Plaintiff’s law firm maintains a very low case volume due to the intense
18 demands associated with wrongful death litigation under § 1983. Budge decl. ¶ 7.
19 The firm reviews dozens of potential cases each year that involve deaths occurring
20 in jails and prisons, but generally accepts only 1-3 new cases annually. *Id.* The firm

1 works exclusively on a contingency basis and assumes significant financial risk
2 with each accepted case due to the substantial time demands and necessity of
3 advancing heavy financial costs required to pursue these cases. *Id.* ¶ 8.

4 Plaintiff's co-lead counsel, Edwin Budge, has devoted the majority of his
5 28-year career to the litigation of § 1983 cases and has developed a particular
6 concentration on § 1983 cases involving deaths in jails and prisons. Budge decl. ¶
7 9. Mr. Budge has litigated numerous § 1983 cases from beginning to end,
8 including many cases involving jail or prison deaths—against counties, private jail
9 operators, private correctional healthcare companies (including NaphCare and its
10 competitors), counties, state departments of correction, and the Federal Bureau of
11 Prisons. *Id.* ¶ 9. Mr. Budge has litigated in-custody death cases in at least twelve
12 federal district courts, including this one. *Id.*

13 Mr. Budge has served as lead or co-lead counsel in approximately 15
14 significant jury trials, primarily in federal court, and has secured at least 20
15 settlements or verdicts in civil rights cases (most under § 1983) of \$1 million or
16 more. Budge decl. ¶ 10. Mr. Budge has personally managed all aspects of civil
17 litigation in these cases, has defeated numerous dispositive motions in § 1983
18 cases, is often asked by attorneys around the country to review and consult on jail
19 death cases, has taught CLEs about jail death litigation, has published writings on
20 the subject of § 1983 litigation and jail death litigation in particular, and has served

1 as a guest lecturer at Seattle University School of Law. *Id.* ¶¶ 10-12. In mid-2019,
2 this Court approved his hourly rate of \$550 in another § 1983 jail death case based
3 on his qualifications and experience at that time. *Id.* ¶ 13.

4 Plaintiff's other co-lead counsel, Hank Balson, has practiced law for
5 approximately 23 years, focusing almost entirely on representing plaintiffs in civil
6 rights claims. Balson decl. ¶ 3. He has worked as legal counsel for the Institutions
7 Project of Columbia Legal Services, litigating civil rights and other claims on
8 behalf of individuals and classes confined in prisons, jails, and other institutions.
9 *Id.* ¶ 4. He has extensive experience at the trial and appellate levels representing
10 incarcerated clients in state and federal courts to secure constitutionally adequate
11 medical care, eliminating gender and disability discrimination, obtaining basic and
12 special education services, enforcing public disclosure laws, and challenging other
13 violations of state and federal rights. *Id.* ¶¶ 4-6. In private practice since 2004, Mr.
14 Balson has continued to represent incarcerated clients with civil rights claims,
15 including multiple clients challenging the denial of necessary medical care. *Id.* ¶ 6.
16 In 2020, this Court approved his hourly rate of \$450 per hour in another jail death
17 case based on his qualifications and experience at that time. *Id.* ¶ 11.

18 A minority of time claimed in this case is for the work of Erik Heipt and
19 Beth Bloom. Mr. Heipt is a member and manager, along with Mr. Budge, of Budge
20 & Heipt, PLLC. His declaration summarizes his focus on litigating § 1983

1 wrongful death cases. His experience is on-par with that of Mr. Budge and his
2 requested hourly rate is the same as that of Mr. Budge. *See* Declaration of Erik J.
3 Heipt. Ms. Bloom, who assisted with jury selection and theme development, has
4 practiced law for approximately 23 years. She has substantial trial experience and
5 has been awarded \$525 per hour for her time as of 2021 by the U.S. District Court
6 for the Western District of Washington. *See* Declaration of Beth Bloom.

7 **B. Hours of Counsel**

8 The declarations of Mr. Budge, Mr. Balson, Mr. Heipt and Ms. Bloom
9 substantiate the hours expended in the pursuit of this case through the date of this
10 motion and attach as exhibits their attorney time records.

11 Mr. Budge's declaration provides a comprehensive overview of the work
12 that was required to achieve the successful outcome in this case. It details the
13 initial review and acceptance of the case on a contingency basis. Budge decl. ¶¶
14 14-15. It discusses the commencement of the litigation, the appearances of defense
15 counsel, the work related to written discovery, and the efforts by Plaintiff's two
16 lead attorneys—Mr. Balson and Mr. Budge—to divide case-related tasks to avoid
17 unnecessary duplication of effort. *Id.* ¶¶ 16-20. It explains the extensive
18 involvement of Sally Hartmann, who devoted hundreds of hours to the case for
19 paralegal-equivalent work (for which no fees are being sought). *Id.* ¶ 21. It reviews
20 the discovery process, the taking of critical depositions, the importance of

1 investigating the nature and extent of the County's spoliation of critical video
2 evidence, and the successful pursuit of a default judgment against the County. *Id.*
3 ¶¶ 22-23. It discusses counsels' work with experts. *Id.* ¶ 24. It explains how,
4 beginning in January of 2022 and continuing through trial more than six months
5 later, well over half the resources of Plaintiff's law firm were devoted to this single
6 case. *Id.* ¶ 25. It summarizes the significant case-related work in the first three
7 months of 2022 and counsel's near-total devotion to extensive and varied pretrial
8 tasks between April and the end of June 2022. *Id.* ¶¶ 26-27. It details the
9 involvement of Ms. Bloom in jury selection and theme development, summarizes
10 counsels' efforts towards thoroughly developing and trying the case in July of
11 2022, and explains that the staffing of the defense trial teams exceeded that of
12 Plaintiff's trial team. *Id.* ¶¶ 28-31. It substantiates the costs claimed as part of this
13 fee petition and discusses the risks associated with cases of this nature. *Id.* ¶¶ 35-37
14 & Ex. B. And it, along with the declarations of Mr. Balson, Mr. Heipt and Ms.
15 Bloom, fully supports the hours and rates of all Plaintiff's lawyers. *See* Budge
16 decl., Ex. A, Balson decl., Ex. A, Heipt decl., Ex. A, and Bloom decl., Exs. A & B.

17 C. Summary

18 As fully outlined in the declarations of counsel, Plaintiff requests an award of
19 reasonable attorneys' fees through the date this motion as follows:

Attorney	Hours	Requested Rate Per Hour	Total Per Attorney & Bloom Law, PLLC
Edwin Budge Budge & Heipt, PLLC	1,173.3	\$600	\$703,980
Hank Balson Budge & Heipt, PLLC	792.8	\$500	\$396,400
Erik Heipt Budge & Heipt, PLLC	202.5	\$600	\$121,500
Beth Bloom/ Bloom Law, PLLC		See Declaration of Beth Bloom	\$36,352.18 ²

Total of Above Table: \$1,258,232.18

Plaintiff also requests an award of recoverable costs in the amount of \$82,936.34. These costs were necessarily and reasonably incurred. They represent expenses for in-house photocopying, travel and lodging, deposition fees, permitted jury research, postage, mediation, technology assistance, transportation, and meals and groceries associated with meetings and out-of-town travel. *See* Budge decl. ¶ 35, Ex. B. This sum is less than half the total costs expended by Plaintiff's counsel in this case and does not include non-recoverable costs such as expert fees. *Id.* ¶ 35.

The lodestar and *Kerr* factors fully merit the requested fees and costs in this matter. The time and labor were intensive and extensive, substantially limiting

² This sum includes Ms. Bloom's fees and those of her staff (\$34,293.75), as well as costs incurred by Bloom Law, PLLC of \$2,058.43. *See* Decl. of Beth Bloom.

1 Plaintiff's counsel from accepting other cases. The case was difficult and hard-
2 fought and demanded meaningful skill and experience. The fees and costs are well-
3 within the customary range. The fee was contingent. The case was not a
4 "desirable" one and, in fact, was undesirable in various respects. The reputation,
5 skill, and experience of Plaintiff's counsel is considerable. Plaintiff prevailed on
6 every major motion, fully prevailed at trial, and obtained substantial monetary
7 relief against both defendants for violations of Ms. Hill's constitutional rights
8 leading to her death, including joint and several relief. The vindication of civil
9 rights in cases such as this merits a full and fair fee award. Plaintiff is not
10 requesting a multiplier.

11 IV. CONCLUSION

12 For the reasons stated above, and as supported by the declarations of
13 counsel, Plaintiff requests that the Court order an award of total fees and costs
14 against Defendants NaphCare and Spokane County, jointly and severally, through
15 the date of this motion in the amount of \$1,341,168.52. Plaintiff requests that the
16 Court direct the entry of a supplemental judgment for this sum. Plaintiff anticipates
17 a further motion for additional fees incurred for work on the case in connection
18 with the resolution of any post-trial motions filed by the Defendants.
19

1 Respectfully submitted this 5th day of August, 2022.

2 /s/ Edwin S. Budge

3 Edwin S. Budge, WSBA #24182

4 Hank Balson, WSBA #29250

5 Erik J. Heipt, WSBA #28113

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13 Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that on the date stated below this document was filed with the Clerk of the Court for the United States District Court for the Eastern District of Washington, via the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

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Dated this 5th day of August, 2022.

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